TEOH SUAN ENG

v.

LEW MENG SHIN & ANOR

HIGH COURT MALAYA, RAUB
VC GEORGE J
[CIVIL SUIT NO. 6 OF 1980]
4 DECEMBER 1981

DAMAGES: *Personal injury - Paraplegia - Dispute on loss of earnings and costs of nursing care - Damages for pain and suffering and loss of amenities - Assessment of damages - Factors to be considered*.

The plaintiff was a passenger in a motorbus which went off the road whilst on its way back to Kuala Lumpur from Genting Highlands. The plaintiff suffered a fracture of the first lumbar vertebra and injury to her spinal cord causing paraplegia and lack of control of her excretory functions. Liability was admitted by the defendants and certain items of special damages was agreed to. The dispute was concerning the quantum of damages for loss of earnings, costs of nursing care and general damages.

According to the evidence, the plaintiff had since 1970 worked as a clerk and on the date of the accident on 25 September 1976, was earning a monthly salary of RM130 with RM15 as special relief allowance and she was supplied with food and lodging. The plaintiff also claimed she was paid commission, wages for overtime work and bonus. PW2, a director of the company the plaintiff worked for, confirmed this but no documentary evidence was introduced to support the alleged overtime and similar payments. It was also contended that the plaintiff would have annual increment in her basic wages and a strong likelihood of an accelerated promotion to supervisor as she was related to the managing director of the company.

Held:

[1] Looking at salaries paid to the plaintiff from 1970 and increments between 1970 and 1976, it did not impress the Court that the plaintiff enjoyed any special privileges by virtue of her vague relationship with the managing director and there was no basis for PW2's assessment that the plaintiff would enjoy accelerated promotion in the future. Therefore the Court would allow for an annual increment of RM10 for each year after 1976 up to 1981. On that basis, the plaintiff's average monthly gross earning for that period 1977 to 1981 would be RM240. The Court would award the plaintiff loss of earnings from 1 January 1977 to date of judgment the sum of RM14,400 on the basis of RM240 for 60 months.

[2] In computing future loss of earnings RM240 is used as a basis against a multiplier of 10 years and applying the tables a sum of RM22,300 is arrived at. In using RM240 the Court considered that the plaintiff would receive from time to time increment but that the plaintiff is not so completely disabled to be incapable of mitigating the loss. The multiplier was arrived at having in mind various contingencies and that the plaintiff is being compensated for the 5 years prior to the date of judgment.

[3] For nursing care the evidence is that the service of a personal maid is sufficient to assist the plaintiff in her disability. It would be reasonable to compute this aspect of compensation on the basis of RM150 per month. Accordingly, for the 5 years up to date of judgment, RM9,000 is allowed and for the future, again applying the tables, RM13,900.

[4] The trend in awards involving paralysis has been to start off with about RM60,000 and increasing the quantum depending on the gravity of the injuries and other relevant factors like the status in life of the claimant. While inflation is a factor that has to be considered, other factors like the investment climate, the increase or decrease of returns on investment, rate of acceleration of capital appreciation are all factors to be had in mind in considering the inflation factor in the context of reflecting it in an award of compensation. On the facts, for pain and suffering and loss of amenities, a sum of RM75,000 is awarded with costs to the plaintiff.

[Order accordingly.]

Cases referred to:
Raja Mokhtar bin Raja Yaacob v. Public Trustee [1970] 2 MLJ 151

Other sources referred to:
Short Encyclopaedia of Medicine for Lawyers, Levitt, p. 304

For the plaintiff - G. Varghese; M/s Richard Ho & Co.
For the defendant - S.P. Veloo; M/s V.P. Nathan & Partners

JUDGMENT

VC George J:

On the morning of 25 September 1976 the plaintiff was travelling as a passenger in a motor bus that was proceeding from the Casino and Hotel Complex at Genting Highlands towards Kuala Lumpur when the bus went off the road as a result of which the plaintiff suffered a fracture of the first lumbar vertebra and injury to her spinal cord that has resulted in the plaintiff suffering from paraplegia. The plaintiff had testified that she has no control over movements of her bowel and bladder. The paucity of information in the medical report has been the subject of justified criticism by learned Counsel for the defence and has caused me more than a little anxiety on whether I should hold that in fact the plaintiff is a paraplegic for life and whether her disabilities include lack of control over the excretory organs. Fortunately for the plaintiff the medical report has a reference to treatment for "bowel and bladder care". My attention was drawn to the reference on "paraplegia" at 304 of the *Short Encyclopaedia of Medicine for Lawyers* by Levitt where it is stated that in the paralysis known as paraplegia the bladder and rectum are often involved in the paralysis. As the reflexes of micturition and defecation are controlled by the spinal cord at the first lumbar vertebra level and since the plaintiff was treated for bowel and bladder care the probabilities are, by a nose as it were, in favour of the contention that the plaintiff did in fact suffer a lack of control of those excretory functions. My forced researches into the realms of medicine suggest that where there is paralysis as a result of injury to the spinal cord and there is no significant improvement in the condition in the first few months after the occurrence of the injury the probabilities are that the disabilities would be permanent which appears to be the condition of the plaintiff. I am constrained to say that I can think of no excuse for the legal advisers of the plaintiff resting their case on a one line badly worded medical report.

Liability in negligence having been admitted by the defendants I am left with having to adjudicate on the quantum of compensation.

In respect of the claim for special damages the parties have not been able to agree on loss of earnings by the plaintiff and on the costs of alleged nursing care. In respect of all the other items claimed as specials agreement was arrived at in the sum of RM4,877.

Since 1970 the plaintiff had worked as a clerk for one Chin Radio (Kedah) Sdn. Bhd. attending on customers who had service problems in respect of their radios and television sets and other electrical equipment. She had started at a basic salary of RM85 per month and was supplied food and lodging. There were yearly increments and when the accident happened on 25 September 1976 she was still a "service" clerk drawing a basic monthly salary of RM130 with RM15 as a special relief allowance and she continued to be supplied with food and lodging. The plaintiff testified that she was also paid certain commission, wages for overtime work and an annual bonus. PW2, a director of Chin Radio (Kedah) Sdn. Bhd. confirmed this but although she said that there were vouchers to support these payments none were produced. PW2 produced the relevant page from the Register of Employees relating to the plaintiff which gave comprehensive particulars of the plaintiff's earnings but significantly the columns for overtime and for miscellaneous payments were, apart from entries in respect of special relief allowance, left blank. It seems to me that if in fact overtime and commission had been paid the amounts paid would have been entered in the register in the same manner in which payments made as special relief allowance were entered.

The plaintiff also claimed RM45 as food allowance and RM30 as lodging allowance but conceded that her share of the room she shared with another employee was only worth RM15.

It is my finding that her average emoluments per month in 1976 was RM205.

It was contended that the plaintiff would have annual increments in her basic wages and that there was a likelihood that she would be promoted to be a supervisor. PW2 said that she thought that the plaintiff would get accelerated promotion and attain the heights of a supervisor because the plaintiff was related to the managing director of the company. If not for that relationship she did not consider that the plaintiff would have gone beyond being a senior clerk which status, had she not met with the accident, she would have enjoyed with some accelerated promotions by 1981 at a basic salary of RM300.

Looking at the salaries paid to the plaintiff from 1970 and the increments given to her between 1970 and 1976 it did not impress on me that the plaintiff enjoyed any special privileges by virtue of her vague relationship with the managing director and I could see no basis for PW2's assessment that the plaintiff would enjoy accelerated promotion in the future. And looking at the salaries of other employees who had joined the company much earlier than the plaintiff the speculations by PW2 seem unjustified. I would allow for an annual increment of RM10 for each of the years after 1976 up to 1981 (which compares well with increase of basic salary between 1970 and 1976 of only RM45 or an average of just over RM7 per annum). On that basis the plaintiff's basic salary would have, by 1981, gone up to RM185 and her gross to RM260 and since the increases are computed at RM10 per month after each year the average monthly gross earning for that period 1977 to 1981 is RM240. As there was no loss of earning up to the end of 1976 I would award the plaintiff for loss of earnings from 1 January 1977 to the date of judgment the sum of RM14,400 on the basis of RM240 for 60 months.

In computing future loss of earnings I would also use RM240 as a basis against a multiplier of 10 years and applying the tables arrive at the sum of RM22,300. In using RM240 I have considered and accept that the plaintiff would receive from time to time increments but also have considered, on the available evidence, that she is not so completely disabled that she is not capable of mitigating the loss. The multiplier of 10 years was arrived at having in mind the various contingencies and also that the plaintiff is also being compensated for the 5 years prior to the date of judgment.

For nursing care the plaintiff is entitled to a reasonable amount. The evidence is that the service of a personal maid was sufficient to assist the plaintiff in her disability. In my assessment it would be reasonable to compute this aspect of compensation on the basis of RM150 per month. Accordingly, for the period of 5 years up to the date of judgment I would allow RM9,000 and for the future, again applying the table RM13,900.

What then is left is to make an award for the head of damages that has come to be known as pain and suffering and loss of amenities.

In *Raja Mokhtar bin Raja Yaacob v. Public Trustee* [1970] 2 MLJ 151, Raja Azlan Shah J (as he then was) said:

> Any compensation for loss of amenities and pain and suffering must be artificial. No sum can be adequate. But the Court must give an award which would represent artificially the gravity of the loss and the severity of the pain and suffering. It is hard to give cogent reasons for this figure or for that. One can only assert (see *Oliver v. Ashman* [1961] 3 All ER 323) I have been referred to comparable awards in 5 local cases also involving paralysis of the lower limbs, and which it said are far more serious than the present case. These cases do not readily fit into the present case. It seems to me that in a given case the quantum of damage is even more than usually at large. Looking at the plaintiff's background a person of his calibre and standing would lose much more than would a student teacher or petrol gauger or cement mixer or gardener or garage fitter.
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> In a case like the present the plaintiff's real loss is not so much his physical injury as the loss of those opportunity to lead a full and normal life which are now denied to him by his physical condition and for what he will suffer from being unable to do so. There are two elements involved what he had lost and what he must feel about it and of the two the latter is generally the more important to the injured man. For every day of his life he is acutely conscious of what he has suffered and what he had lost. He must therefore be compensated, as far as money can do it, for that and for the mental strain and anxiety which results.

The plaintiff in that case was, at 41 years of age a senior civil servant and went through considerably greater pain and suffering (before ending up with almost similar disabilities) suffered by the plaintiff in the instant case. I was also referred to the judgment in the cases involving the student teacher, the petrol gauger and the cement mixer.

The discernible trend in the awards given to cases involving paralysis has been to start off with about RM60,000 for a paraplegic claimant and increasing the quantum depending on the degree of gravity of the injuries (and disabilities) and other relevant factors like the status in life of the claimant.

Unlike what was being done in England and Singapore from about the early seventies, there had not been in Malaysia, generally speaking, any significant increase in the level of awards for the factor of inflation in the cost of living. This could very well be because up to 1973 such inflation as there was in Malaysia paled in comparison to the runaway inflation in the United Kingdom.

With the oil crisis in 1973 inflation at a significant level finally hit our shores and the need to reflect this economic reality as a factor in the assessment of damages based on comparable awards came to be recognised by the Malaysian Courts.

It has been suggested that the increase in awards should be equated with the Consumer Price Index which has not been done by any of our Courts or the Courts in Singapore. Even in England where it would appear that substantial increases have been made to the level of awards compared to awards given in the sixties, there does not seem to have been an attempt

to equate the increase with the rise in the figures of the Consumer Price Index. While inflation certainly is a factor that has to be considered in considering comparable awards made in the earlier decades, Consumer Price Index is only one of many factor's that has to be had in mind in assessing the increase to be made in the award. In my view, *inter alia*, factors like the investment climate, the increase or decrease of returns on investment (for example the returns on fixed deposits have almost doubled since the sixties), the rate of acceleration of capital appreciation are all factors to be had in mind in considering the inflation factor in the context of reflecting it in an award of compensation. It is thus seen that a mathematical formula for the inflation factor cannot be devised and in any event there does not appear to be any compelling reasons to devise such a formula.

On the facts of the instant case for pain and suffering and loss of amenities I would award RM75,000.

Accordingly, there will be judgment for the plaintiff as follows:

(1)	Agreed special damages	RM 4,877
(2)	Loss of earnings up to date of judgment ...	RM 14,400
(3)	Future loss of earnings	RM 22,300
(4)	Services of a maid up to date of judgment	RM 9,000
(5)	Services of a maid for the future	RM 13,900
(6)	Pain and suffering and loss of amenities	RM 75,000
	Total	RM139,477

The above items (1), (2) and (4) shall bear interest at 4% per annum from the date of the accident; item (6) shall bear interest at 6% per annum from date of service of the write the judgment sum of RM139,477 shall bear interest at 8% per annum from the date of judgment until realisation.

The defendants will also pay the costs of the action.

Also found at [1982] CLJ 202